

No. 71-2203

In The

Supreme Court of the United States

OCTOBER TERM 1972

HOYT C. CUPP, Superintendent,
Oregon State Penitentiary,
Petitioner,

v.

DANIEL P. MURPHY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM OF RESPONDENT IN OPPOSITION

This Court has stated:

" * * * * searches conducted without prior approval by judge or magistrate, are per se, unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions."

Coolidge v. New Hampshire, 403 US 443, 454 (1971); cf. *Vale v. Louisiana*, 399 US 30, 34 (1970).

None of these specifically established and well delineated exceptions exist here.

This was not a search incident to an arrest, *Shipley v. California*, 395 US 818; *Chimel v. California*, 395 US 752 (1969), nor in hot pursuit, *Warden v. Hayden*, 387 US 294, 298-299 (1967), nor was the material in the course of destruction, *Schmerber v. California*, 384 US 757, 770-771 (1966), nor a search on probable cause of an automobile in poised condition, *Coolidge v. New Hampshire*, *supra*, nor a frisk upon an interrogation, *Sibron v. New York*, 392 US 40 (1967).

If searches are to be allowed whenever evidence might be destroyed, then the warrant, the affidavit of probable cause, and the magistrate's determination, are all superfluous, for all evidence on persons, in houses or elsewhere might conceivably be destroyed. If need there be, detention for the time necessary to get a warrant appears reasonable. *U.S. v. Van Leeuwen*, 397 US 249 (1970); cf. *Terry v. Ohio*, 392 US 1 (1968); *Morales v. New York*, 396 US 102 (1969).

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HOWARD R. LONERGAN,

Counsel for Respondent.